

REMARKS

Reconsideration and allowance of the subject application are respectfully solicited.

Claims 17, 18, 21 through 24, 26 through 28, 31 through 34, 36, 37, 47, 48, 51 through 54, 56, 57, and 59 through 61 are pending, with Claims 17, 23, 24, 27, 33, 34, 47, 53, 54, 59, 60, and 61 being independent. Claims 17, 18, 21, 22, 26 through 28, 31, 32, 37, 47, 48, 51, 52, and 57 were allowed. Claims 24, 34, 36, and 54 have been amended.

Claims 24, 34, 36, and 54 were rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 5,359,593 (Derby, et al.). All rejections are respectfully traversed.

Claims 24, 34, and 54 variously recite, *inter alia*, throttling a user of the first apparatus in accordance with (1) a leaky bucket analysis of the user's throughput performed by the gateway or the performing means of the gateway and (2) a level of service subscribed to by the user as determined by the gateway or the determining means of the gateway, wherein the throttling unit or gateway intercepts a packet on a TCP/IP connection between the first apparatus and the second apparatus, with discarding as claimed.

However, Applicants respectfully submit that Derby, et al. fails to disclose or suggest at least the above-discussed claimed features as recited, *inter alia*, in Claims 24, 34, and 54. Applicants respectfully submit that Derby, et al. discloses, e.g., that the bandwidth management subsystems are located in the endnodes 12 of Fig. 1 of Derby, et al. with packets launched onto the network with one of at least two priority classes (e.g., red/green) (col. 5), and that such provides neither a description nor a suggestion of at least the above-discussed claimed features as recited, *inter alia*, in Claims 24, 34, and 54. Applicants further respectfully submit that there has been no showing of any indication of motivation in the cited documents that would lead one having ordinary skill in the art to attempt to modify Derby, et al. to arrive at such features.

Claims 23, 33, 53, and 56 were rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,438,101 B1 (Kalampoukas, et al.) in view of US 2001/0043609 A1 (Chapman, et al.). All rejections are respectfully traversed.

Applicants are submitting herewith a Declaration Under 37 C.F.R. § 1.131 of Douglas M. Dillon and Vivek Gupta, which Declaration is respectfully to obviate this rejection by showing invention of Claims 23, 33, 53, and 56 prior to Chapman, et al.'s April 28, 1998 filing date, thereby precluding reliance upon Chapman, et al. under 35 U.S.C. § 102(e). MPEP 715, 715.02, 715.04, 715.07. Furthermore, Applicants respectfully submit that there has been no showing of any indication of motivation in the cited documents that would lead one having ordinary skill in the art to attempt to combine the documents so as to arrive at the inventions of Claims 23, 33, 53, and 56 assuming, *arguendo*, that the documents could be combined.

Claims 59 through 61 were rejected under 35 U.S.C. § 103 over Derby, et al. in view of Kalampoukas, et al. All rejections are respectfully traversed.

The Declaration mentioned above is respectfully submitted to obviate this rejection too, by showing conception of Claims 59 through 61 prior to Kalampoukas, et al.'s December 23, 1997 provisional application filing date, coupled with diligence from prior to that date up to a February 6, 1998 actual reduction to practice of those claims, thereby precluding reliance upon Kalampoukas, et al. under 35 U.S.C. § 102(e). MPEP 715, 715.02, 715.04, 715.07. Furthermore, Applicants respectfully submit that there has been no showing of any indication of motivation in the cited documents that would lead one having ordinary skill in the art to attempt to combine the documents so as to arrive at the inventions of Claims 59 through 61, assuming, *arguendo*, that the documents could be combined.

The dependent claims are also submitted to be patentable because they set forth additional aspects of the present invention and are dependent from the independent claims discussed above. Therefore, separate and individual consideration of each dependent claim is respectfully requested.

REQUEST FOR INTERVIEW

If any questions remain, Applicants respectfully request that the Examiner contact Applicants' undersigned representative, Daniel S. Glueck, at (202) 530-1010 to schedule a personal interview. Favorable consideration in this regard is earnestly solicited.

CONCLUSION

Applicants submit that this application is in condition for allowance, and a Notice of Allowance is respectfully requested.

Applicants' undersigned attorney may be reached by telephone at (202) 530-1010.

Respectfully submitted,

/Daniel S. Glueck/
Daniel S. Glueck
Attorney for Applicants
Registration No. 37,838

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200
DSG:jjr